[redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NUMBER 287

JOHN PAUL SHELTON,

Petitioner

VERSUS

T. RALPH GRIMES,
SHERIFF OF FULTON COUNTY,

Respondent

PETITIONER'S REPLY BRIEF

[redacted]

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PETITIONER'S REPLY BRIEF

Respondent argues that the conflict between the Georgia Supreme Court and the highest courts of other states "is more apparent than real" (Br. 4). Respondent is totally incorrect. Even a cursory reading of the conflicting decisions cited in the petition for writ of certiorari reveals a real and obvious conflict between the state supreme courts on this important federal question.

Respondent takes issue with the proposition that this Court will grant certiorari "in cases of conflict between state courts of last resort" (Br. 4). Respondent overlooks the crucial fact that the conflict cited in the instant

case relates to a *federal* question, inasmuch as interstate extradition is controlled by 18 U.S.C. 3182 (Act of Congress Approved Feb. 12, 1793), and the allocation of the burden of proof in extradition hearings involves procedural due process as controlled by the Fourteenth Amendment. Furthermore, Georgia's Uniform Extradition Act provides that the Governor's authority to deliver up fugitives is subject to "the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof" (Ga. Code. Anno. 44–403). The Georgia Constitution also provides that the Constitution and laws of the United States take precedence over state laws (Ga. Const., Ga. Code Anno. 2–8001). So it cannot seriously be argued that Georgia has preempted, or even attempted to preempt, the field of interstate extradition.

Respondent observes that petitioner "cites no authority" for the proposition that this Court should resolve conflicts between state courts of last resort, and that "None has come to our attention" (Br. 4). Ample precedent exists for granting the writ to resolve such conflicts. In *T. V. Williams v. Stockham Valves & Fittings* (1959) 358 U.S. 450, 3 L ed 2d 421, 79 S. Ct. 357, 67 ALR 2d 1292, the State Revenue Commissioner of Georgia asked this Court to grant certiorari to review a decision of the Georgia Supreme Court. One of the principal reasons relied upon in the petition for certiorari was: "3. The decision of the Supreme Court of Georgia is in conflict with decisions of the supreme courts of at least six other states on these questions and produces a lack of uniformity in the application of the Constitution of the United States amongst the several states."

The petition for certiorari was granted, and is cited verbatim in *Ga. Pleading, Practice and Legal Forms, Vol. 1, page 13 et seq,* as a model petition. The question involved in that case concerned the constitutionality of state tax laws, and was a federal question being decided by state courts—as is the question presented in the instant case. That case arose in Fulton County, Georgia, as does the instant case. This Court granted certiorari and reversed the Georgia Supreme Court. Mr. Justice Clark wrote this Court's opinion, and what he said with respect to reasons for granting the writ would be equally applicable to the instant case, with some minor paraphrasing. Observing that there was a "need for clearing up the tangled underbrush of past cases" with respect to the question presented, and that commerce between the states had "grown up like Topsy", Justice Clark said:

> "The resulting judicial application of constitutional principles to specific state statutes leaves much room for controversy and confusion and little in the way of precise guides to the States . . . This Court alone has handed down some three hundred full-dress opinions . . . the decisions have been 'not always clear . . . consistent or reconcilable. A few have been specifically overruled, while others no longer fully represent the present state of the law.' " (358 U.S. at p. 457, 458).

Respondent has not commented on reason number three relied on by petitioner for granting the writ, viz., that the decision below "is in direct conflict with unreversed decisions of *federal* courts regarding extradition warrants." Neither does respondent comment upon, or deny, the *federal* nature of the question presented.

Respondent does not, and cannot, reconcile or rationalize the very real and obvious conflict between the decisions, both state and federal, cited in the petition for certiorari. Respondent rather attempts to argue the merits of the decision below by citing five state cases which respondent construes as being "in harmony with Georgia in the matter of recitals" (Br. 4). If these five cases mean what respondent says they do, then they merely serve to point up the fact that there is, indeed, a conflict on a federal question and a "need for clearing up the tangled underbrush of past cases" (*Williams case, supra*, 358 U.S. at p. 457).

If the mere number of decisions on each side of the question means anything, petitioner would like to cite another state court decision that is in direct conflict with the decision below. This is the case of *Baugh v. State* (1962) 154 So. 2d 674, at p. 676, where the Supreme Court of Alabama held an extradition warrant insufficient for "failing to recite that the requisition was accompanied by an authenticated copy of an indictment or information supported by affidavit or an affidavit made before a magistrate."

Respondent cites three extradition decisions of this Court as authority for the proposition that the issuance of an extradition warrant "is prima facie evidence that the accused is a fugitive from justice and was substantially charged with the commission of a crime" (Br. 3–4). Each decision is readily distinguishable. Each decision helps rather than hurts petitioner. The first decision is *Illinois ex rel McNichols v. Pease*, 207 U.S. 100, where this Court observed that the extradition warrant recited—and that "its recitals are important" (207 U.S. at p. 105)—that the governor of the demand-

ing state had produced to the governor of the asylum state a copy of a "complaint and affidavit made by and before a properly empowered officer in and of the said state, in accordance with the laws thereof, charging John McNichols, the person so demanded, with having committed against the laws of the said state of Wisconsin the crime of larceny from the person, which appears by the said copy of a complaint and affidavit certified as authentic by the governor of said state, now on file in the office of the secretary of state of Illinois . . ." (207 U.S. at pp. 105–106). This Court further observed that the record showed that McNichols was in custody under an extradition warrant "which appears upon its face to be warranted by the Constitution and laws of the United States" (207 U.S. at p. 109); and that "whether the supreme court of Illinois erred in its final judgment must be determined by the record before us" (207 U.S. at p. 110). The accused in that case did not raise the question of sufficiency of recitals in the governor's warrant, but raised the defense of alibi, which this Court found wanting. In ordering the accused extradited this Court said:

> "When a person is held in custody as a fugitive from justice under an extradition warrant, *in proper form, and showing upon its face all that is required by law to be shown as a prerequisite to its being issued,* he should not be discharged from custody unless it is made clearly and satisfactorily to appear that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States" (207 U.S. at p. 112). (Emphasis by brief writer).

Thus the McNichols case says only that a Governor's warrant is prima facie sufficient to hold the accused only

when it is IN PROPER FORM and shows UPON ITS FACE the facts necessary to its validity.

The second extradition decision cited by respondent is *In re Moyer*, 203 U.S. 221 (Br. 4), where the accused sought release on habeas corpus *after* he had been taken to the demanding state of Idaho. The Idaho Supreme Court denied relief, and this Court affirmed on authority of *Pettibone v. Nichols*, 203 U.S. 192, pointing out that the proceeding in the latter case rested upon a criminal complaint "verified by the oath" of the prosecuting attorney. (203 U.S. at p. 193).

The third extradition decision of this Court cited by respondent is *Munsey v. Clough*, 196 U.S. 364 (Br. 4). In this case the accused did not question the sufficiency of recitals in the governor's warrant *per se*, but "alleged the insufficiency of the papers to authorize the granting of the same" (196 U.S. at p. 371). The supporting documents accompanying the requisition in that case were introduced in evidence—which was not done in the instant case—and the record showed that the supporting papers before the governor of the asylum state included a "copy of an indictment" (196 U.S. at p. 369). There was no recital in the governor's warrant that the person demanded was a fugitive from justice; however this defect was cured by the introduction of the supporting papers, which showed that there was before the governor of the asylum state an "affidavit of one Whitney", stating that at the time of the commission of the crime set forth in the indictment the defendant was in the demanding state and that the defendant "fled from said Commonwealth of Massachusetts on or about the fourth day of November A.D. 1901" (196 U.S. at p. 370). This Court in denying relief

to the habeas corpus petitioner observed that the affidavit of Whitney was "to the effect that at the time of the commission of the crime she (defendant) was in the State of Massachusetts" (196 U.S. at p. 374).

Respondent cites the extradition case of *South Carolina v. Bailey*, 289 U.S. 412, as authority for the Georgia procedure "as respects the burden of proof or of going forward with evidence" (Br. 8). In Bailey the sufficiency of the governor's warrant was not in question, the petitioner there relying wholly upon proof of alibi, which was not conclusive.

Respondent cites another extradition case, *Drew v. Thaw*, 235 U.S. 432, in connection with the argument that the governor presumably complied with the law in issuing the warrant. This case is not in point, inasmuch as this Court observed, in ordering Thaw's extradition, that the demand was in due form and was based on an "indictment" (235 U.S. at p. 440).

Finally respondent cites two non-extradition decisions by this Court as authority for the proposition that the states may regulate the burden of proof in their courts (Br. 8). The first case is *Smith v. California*, 361 U.S. 147, where this Court held a municipal obscenity ordinance unconstitutional and observed (obiter) that the states generally may regulate allocation of the burden of proof in their courts, but then went on to say that where this device had been used unconstitutionally "we struck down its application" (361 U.S. 147, at p. 151).

The second case cited by respondent regarding burden of proof is *Speiser v. Randall*, 357 U.S. 513, 2 L ed 2d 1460, 78 S. Ct. 1332. We are grateful to respondent for

citing this case, where this Court struck down a California statute that unfairly shifted the burden of proof to claimants in tax exemption cases. This Court said:

> "Of course, the burden of going forward with the evidence at some stages of a criminal trial may be placed on the defendant, but only after the State has 'proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression'. *Morrison v. California*, 291 U.S. 82, 88, 89, 78 L ed 664, 669, 54 S Ct. 281. In civil cases too this Court has struck down state statutes unfairly shifting the burden of proof." (357 U.S. at p. 524).

This Court further held in *Speiser* that "The power to create presumptions is not a means of escape from constitutional restrictions", citing *Bailey v. Alabama*, 219 U.S. 219, 239. (357 U.S. at p. 526). This Court then held that "Since the entire statutory procedure, by placing the burden of proof on the claimants, violated the requirements of due process, appellants were not obliged to take the first step in such a procedure" (357 U.S. at p. 529).

The question in the instant case finally boils down to whether the burden was on the petitioning prisoner or the respondent sheriff to produce the "supporting papers" referred to, but not otherwise described, in the Governor's warrant. The Hon. Carter Goode, Assistant District Attorney, who represented respon-

dent at the habeas corpus hearing, and who still represents respondent in this Court, has not explained to this Court his reason for not introducing the "supporting papers" in evidence. Mr. Goode claimed to have in his possession "the entire Extradition Proceeding" (R. 52, App. 12A). But when petitioner's counsel said he would object to admission of any document "unless it is shown that the Governor himself considered that paper in reaching his decision" (R. 53, App. 12A, 13A), Mr. Goode hastily said, "Your Honor, I tell you what I'll do, I think I'm going to withdraw everything we have offered except the Governor's warrant from the Governor of the State of Georgia, save a lot of this, and then see where we come out" (R. 62, App. 16A). "Your Honor, I stand on the Governor's warrant" (R. 90, App. 18A).

If the Governor's warrant had recited the facts necessary to the validity of its issuance, particularly that it was based on an indictment or affidavit, respondent might well stand on it. Since it did not recite those facts, the burden was on respondent's counsel, who claimed he had the "entire extradition proceeding" in his possession, to produce the "supporting papers" referred to in the warrant, and to show by competent evidence that they were before Governor Maddox, and that they included an indictment or affidavit. It is rather frivolous and quibbling to suggest that the burden was not on respondent, whose counsel claimed to have the supporting papers, but was on petitioner, who did not have them, and had no way of knowing what they consisted of, or whether they were indeed the supporting documents that were considered by Governor Maddox and referred to in the warrant.

Respondent cites Georgia's Uniform Extradition Act (Br. 3, 6) with which Act petitioner has no quarrel. This Act provides that the Governor's warrant "must substantially recite the facts necessary to the validity of its issuance" (Ga. Code Anno. 44–408, Acts 1951, pp. 726, 728). Petitioner stands on the proposition that the respondent *cannot* stand, any longer, upon a Governor's warrant which fails to recite the facts "necessary to the validity of its issuance".

CONCLUSION

For the reason stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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PIERRE HOWARD
Attorney for Petitioner
870 First National Bank Building
Decatur, Georgia

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JAMES L. MAYSON
Attorney for Petitioner
325 Atlanta National Building
50 Whitehall Street, S.W.
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I certify this .... day of February, 1969 that I have mailed a copy of the foregoing reply brief to counsel for respondent, Hon. Carter Goode, Assistant Solicitor General, Fulton County Courthouse, Atlanta, Georgia 30303, postage prepaid.

JAMES L. MAYSON
Attorney for Petitioner

325 Atlanta National Building
50 Whitehall Street, S.W.
Atlanta, Georgia 30303
Phone 688–7152 (Area Code 404)